

HOUSE BILL NO. 461

INTRODUCED BY L. SHELDON-GALLOWAY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO REPORTING OF CHILD ABUSE AND NEGLECT; REQUIRING AUDIO RECORDING OF REPORTS; REQUIRING CERTAIN INFORMATION TO BE REQUESTED; ~~REQUIRING NOTIFICATION TO REPORTERS; PROVIDING A PENALTY FOR MAKING A FALSE REPORT; REQUIRING FALSE REPORTS BE REFERRED TO A COUNTY ATTORNEY;~~ AND AMENDING SECTIONS 41-3-201 AND ~~45-7-203~~41-3-207, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Department procedures for reports -- recording -- notifications.** (1) A department employee receiving a report of abuse or neglect pursuant to this part shall:

(a) obtain the information and provide the notifications specified in this section; and

(b) make an audio recording when a report is made by phone. The department shall retain the recording in the same manner as provided for safety and risk assessments in 41-3-202.

(2) A department employee receiving a report of abuse or neglect shall request the following information:

(a) the specific facts giving rise to the reasonable suspicion of child abuse or neglect and the source or sources of the information; and

(b) (i) if the person making the report is required under 41-3-201 to report suspected abuse or neglect, the person's name, AND telephone number, ~~and business address~~ and the capacity that makes the person a mandatory reporter under 41-3-201; or

(ii) if the person making the report is not a mandatory reporter under 41-3-201, the person's name, AND telephone number, ~~and home address~~. If the person is unwilling to provide the information, the person receiving the report shall notify the caller that if the caller suspects the child is at serious risk of imminent harm, ~~the TO call will be transferred to 9-1-1 so it~~ THE CALL will be prioritized as an emergency.

(3) Reports made under this part are confidential as provided in ~~43-1-205~~ 41-3-205. The privacy of

the person making the report must be protected as provided in 41-3-205(3)(d) and (3)(h).

(4) A department employee receiving a report pursuant to 41-3-201 shall:

(a) to the greatest extent possible, attempt to obtain the name, AND phone number, ~~and address~~ of the person making the report and document any other identifying information available, including but not limited to the caller's phone number when identified by the phone system; and

(b) if the report is being made by phone, notify the caller that the report is being recorded and the person's identity will be kept confidential.

~~(5) A person making a report must be informed of the penalty for making a false report under this chapter.~~

**NEW SECTION. Section 2. Right of aggrieved party.** (1) A person who is alleged to be a perpetrator of abuse or neglect in a report made under this part may file a complaint with the ~~office of the child and family ombudsman~~ COUNTY ATTORNEY if the person believes the report was false or made with malicious intent. The ~~office~~ COUNTY ATTORNEY shall investigate the complaint, including obtaining any recordings made of the reports.

(2) If the ~~investigation finds~~ OMBUDSMAN SUSPECTS that a report was made with false or malicious intent AND MAY BE CONSIDERED AN OFFENSE UNDER 45-7-203, the ombudsman shall report the ~~finding~~ MATTER to the county attorney having jurisdiction of the matter.

**Section 3.** Section 41-3-201, MCA, is amended to read:

**"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the department of public health and human services. The department shall follow the provisions of [section 1] in taking the report.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission,

1 examination, care, or treatment of persons;

2 (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or  
3 any other health or mental health professional;

4 (c) religious healers;

5 (d) school teachers, other school officials, and employees who work during regular school hours;

6 (e) a social worker licensed pursuant to Title 37, child protection specialist, operator or employee  
7 of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program  
8 organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care  
9 facility;

10 (f) a foster care, residential, or institutional worker;

11 (g) a peace officer or other law enforcement official;

12 (h) a member of the clergy, as defined in 15-6-201(2)(b);

13 (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of  
14 alleged abuse or neglect;

15 (j) an employee of an entity that contracts with the department to provide direct services to  
16 children; and

17 (k) an employee of the department while in conduct of the employee's duties.

18 (3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant  
19 shall report to the department any infant known to the professional to be affected by a dangerous drug, as  
20 defined in 50-32-101.

21 (4) Any person may make a report under this section if the person knows or has reasonable cause  
22 to suspect that a child is abused or neglected. The department shall follow the provisions of [section 1] when  
23 taking the report.

24 (5) (a) When a professional or official required to report under subsection (2) makes a report, the  
25 department:

26 (i) may share information with:

27 (A) that professional or official; or

28 (B) other individuals with whom the professional or official works in an official capacity if the

1 individuals are part of a team that responds to matters involving the child or the person about whom the report  
2 was made and the professional or official has asked that the information be shared with the individuals; and

3 (ii) shall share information with the individuals listed in subsections (5)(a)(i)(A) and (5)(a)(i)(B) on  
4 specific request. Information shared pursuant to this subsection (5)(a)(ii) may be limited to the outcome of the  
5 investigation and any subsequent action that will be taken on behalf of the child who is the subject of the report.

6 (b) The department may provide information in accordance with 41-3-202(8) and also share  
7 information about the investigation, limited to its outcome and any subsequent action that will be taken on  
8 behalf of the child who is the subject of the report.

9 (c) Individuals who receive information pursuant to this subsection (5) shall maintain the  
10 confidentiality of the information as required by 41-3-205.

11 (6) (a) Except as provided in subsection (6)(b) or (6)(c), a person listed in subsection (2) may not  
12 refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

13 (b) A member of the clergy or a priest is not required to make a report under this section if:

14 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made  
15 to the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

16 (ii) the statement was intended to be a part of a confidential communication between the member  
17 of the clergy or the priest and a member of the church or congregation; and

18 (iii) the person who made the statement or confession does not consent to the disclosure by the  
19 member of the clergy or the priest.

20 (c) A member of the clergy or a priest is not required to make a report under this section if the  
21 communication is required to be confidential by canon law, church doctrine, or established church practice.

22 (7) The reports referred to under this section must contain:

23 (a) the names and addresses of the child and the child's parents or other persons responsible for  
24 the child's care;

25 (b) to the extent known, the child's age and the nature and extent of the child's injuries, including  
26 any evidence of previous injuries;

27 (c) any other information that the maker of the report believes might be helpful in establishing the  
28 cause of the injuries or showing the willful neglect and the identity of the person or persons responsible for the

1 injury or neglect; and

2 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or  
3 willful neglect, within the meaning of this chapter."  
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5 **Section 4.** Section 41-3-207, MCA, is amended to read:

6 ~~"41-3-207. Penalty for Penalties -- failure to report -- false report.~~ (1) Any person, official, or  
7 institution required by 41-3-201 to report known or suspected child abuse or neglect who fails to do so or who  
8 prevents another person from reasonably doing so is civilly liable for the damages proximately caused by the  
9 act or omission.

10 (2) ~~Except as provided in subsection (3), any person or official required by 41-3-201 to report~~  
11 ~~known or suspected child abuse or neglect who purposely or knowingly fails to report known child abuse or~~  
12 ~~neglect or purposely or knowingly prevents another person from making a report is guilty of a misdemeanor.~~

13 (3) ~~Any person or official required by 41-3-201 to report known or suspected sexual abuse or~~  
14 ~~sexual exploitation who purposely or knowingly fails to report known sexual abuse or sexual exploitation of a~~  
15 ~~child or purposely or knowingly prevents another person from making a report is guilty of a felony and shall be~~  
16 ~~imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or~~  
17 ~~both.~~

18 (4) ~~A person who purposely or knowingly makes a false report of suspected child abuse under 41-~~  
19 ~~3-201 in bad faith or with malicious purpose is guilty of a misdemeanor and is subject to imprisonment of at~~  
20 ~~least 1 month and no more than 1 year in jail and a fine of at least \$500 and no more than \$2,500, or both. "~~

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22 **SECTION 4. SECTION 45-7-203, MCA, IS AMENDED TO READ:**

23 **"45-7-203. Unsworn falsification to authorities.** (1) A person commits an offense under this section  
24 if, with the purpose to mislead a public servant in performing an official function, the person:

25 (a) makes any written or verbal false statement that the person does not believe to be true;

26 (b) purposely creates a false impression in a written application for any pecuniary or other benefit by  
27 omitting information necessary to prevent statements from being misleading;

28 (c) submits or invites reliance on any writing that the person knows to be forged, altered, or otherwise

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7       NEW SECTION. **Section 5. Codification instruction.** [Sections 1 and 2] are intended to be codified  
8 as an integral part of Title 41, chapter 3, part 2, and the provisions of Title 41, chapter 3, part 2, apply to  
9 [sections 1 and 2].

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